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HOUSE BILL 05-1180

BY REPRESENTATIVE(S) Rose, Berens, Crane, Hoppe, and Penry;
also SENATOR(S) Entz, Bacon, Evans, and Isgar.

CONCERNING CHANGES TO TREAT HORTICULTURAL AND FLORICULTURAL
OPERATIONS LIKE AGRICULTURAL OPERATIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-4-103 (2), Colorado Revised Statutes, is amended to read:

8-4-103. Payment of wages - pay statement - record retention - tip notification. (2) (a) In agricultural, ~~and~~ horticultural, AND FLORICULTURAL pursuits and in stock or poultry raising, when the employee in such employments is boarded and lodged by the employer, all wages or compensation earned by any employee in such employment shall be due and payable for regular periods of no greater duration than one month and on paydays no later than ten days following the close of each pay period.

(b) NOTHING IN PARAGRAPH (a) OF THIS SUBSECTION (2), AS AMENDED BY HOUSE BILL 05-1180, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY, SHALL BE CONSTRUED AS CHANGING THE PROPERTY TAX CLASSIFICATION OF PROPERTY OWNED BY A

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

FLORICULTURAL OPERATION.

SECTION 2. 8-20.5-101 (2) (b) (III), Colorado Revised Statutes, is amended to read:

8-20.5-101. Definitions. As used in this article, unless the context otherwise requires:

(2) (b) "Aboveground storage tank" does not include:

(III) (A) Farm and residential tanks OR TANKS USED FOR HORTICULTURAL OR FLORICULTURAL OPERATIONS;

(B) NOTHING IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (III), AS AMENDED BY HOUSE BILL 05-1180, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY, SHALL BE CONSTRUED AS CHANGING THE PROPERTY TAX CLASSIFICATION OF PROPERTY OWNED BY A HORTICULTURAL OR FLORICULTURAL OPERATION.

SECTION 3. 24-65.1-202 (2) (a) (I), Colorado Revised Statutes, is amended to read:

24-65.1-202. Criteria for administration of areas of state interest.

(2) (a) Natural hazard areas shall be administered as follows:

(I) (A) Floodplains shall be administered so as to minimize significant hazards to public health and safety or to property. The Colorado water conservation board shall promulgate a model floodplain regulation no later than September 30, 1974. Open space activities such as agriculture, HORTICULTURE, FLORICULTURE, recreation, and mineral extraction shall be encouraged in the floodplains. Any combination of these activities shall be conducted in a mutually compatible manner. Building of structures in the floodplain shall be designed in terms of the availability of flood protection devices, proposed intensity of use, effects on the acceleration of floodwaters, potential significant hazards to public health and safety or to property, and other impact of such development on downstream communities such as the creation of obstructions during floods. Activities shall be discouraged that, in time of flooding, would create significant hazards to public health and safety or to property. Shallow wells, solid waste disposal sites, and septic tanks and sewage disposal systems shall be protected from inundation by floodwaters. Unless an activity of state

interest is to be conducted therein, an area of corrosive soil, expansive soil and rock, or siltation shall not be designated as an area of state interest unless the Colorado conservation board, through the local conservation district, identifies such area for designation.

(B) NOTHING IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I), AS AMENDED BY HOUSE BILL 05-1180, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY, SHALL BE CONSTRUED AS CHANGING THE PROPERTY TAX CLASSIFICATION OF PROPERTY OWNED BY A HORTICULTURAL OR FLORICULTURAL OPERATION.

SECTION 4. 25-7-109 (8), Colorado Revised Statutes, is amended to read:

25-7-109. Commission to promulgate emission control regulations. (8) (a) Notwithstanding any other provision of this section, the commission shall not regulate emissions from agricultural, HORTICULTURAL, OR FLORICULTURAL production such as farming, seasonal crop drying, animal feeding operations that are not housed commercial swine feeding operations as defined in section 25-8-501.1 (2) (b), and pesticide application; except that the commission shall regulate such emissions if they are "major stationary sources", as that term is defined in 42 U.S.C. sec. 7602 (j), or are required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program), or are participating in the early reduction program of section 112 of the federal act, or is not required by section 111 of the federal act, or is not required for sources to be excluded as a major source under this article.

(b) NOTHING IN PARAGRAPH (a) OF THIS SUBSECTION (8), AS AMENDED BY HOUSE BILL 05-1180, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY, SHALL BE CONSTRUED AS CHANGING THE PROPERTY TAX CLASSIFICATION OF PROPERTY OWNED BY A HORTICULTURAL OR FLORICULTURAL OPERATION.

SECTION 5. The introductory portions to 25-7-114.5 (12.5) (a) (I) and (12.5) (b), Colorado Revised Statutes, are amended, and the said 25-7-114.5 (12.5) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

25-7-114.5. Application review and public participation.

(12.5) (a) (I) Except for sources involved in agricultural, HORTICULTURAL, OR FLORICULTURAL production such as farming, seasonal crop drying, animal feeding, or pesticide application, upon determination by the division that the criteria set forth in paragraph (b) of this subsection (12.5) applies to a source that is not required to obtain a renewable operating permit, the division may reopen such construction permit for the purpose of imposing any or all of the following additional terms and conditions:

(b) With the exception of those sources involved in agricultural, HORTICULTURAL, OR FLORICULTURAL production such as farming, seasonal crop drying, animal feeding, and pesticide application, a source's construction permit may be reopened for cause for the purposes of paragraph (a) of this subsection (12.5) only upon a determination by the division that the location of the source is significant in terms of its proximity to residential or business areas, and one or more of the following criteria apply to the permitted source:

(c) NOTHING IN PARAGRAPH (a) OR (b) OF THIS SUBSECTION (12.5), AS AMENDED BY HOUSE BILL 05-1180, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY, SHALL BE CONSTRUED AS CHANGING THE PROPERTY TAX CLASSIFICATION OF PROPERTY OWNED BY A HORTICULTURAL OR FLORICULTURAL OPERATION.

SECTION 6. 25-7-211, Colorado Revised Statutes, is amended to read:

25-7-211. Visibility impairment attribution studies. (1) Any visibility impairment reasonable attribution study pertaining to class I areas shall be subject to balanced peer review by a panel including scientists with appropriate expertise who do not have any substantive involvement with any party, shall be site-specific with respect to any suspected source of impairment and to any impacted area, shall be conducted under the oversight of the division, including, but not limited to, determination of deadlines for such study, and shall utilize study design and data collection and analytical techniques, including, but not limited to, contemporaneous ambient air quality, visibility, and meteorological sampling that allows correlation of the data relevant to any such study. With the exception of emissions from agricultural, HORTICULTURAL, OR FLORICULTURAL activities ~~which~~ THAT are exempted under section 25-7-109 (8), relevant data shall include a reasonable assessment of the contributions of emissions from

reasonably identifiable sources, including natural sources, within the state and region. Any remedy selection must include relevant economic impact data. In order to minimize delay in the process, the study shall proceed as expeditiously as sound science will allow. The cost of any such study shall not be required to be paid by the department of public health and environment.

(2) NOTHING IN SUBSECTION (1) OF THIS SECTION, AS AMENDED BY HOUSE BILL 05-1180, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY, SHALL BE CONSTRUED AS CHANGING THE PROPERTY TAX CLASSIFICATION OF PROPERTY OWNED BY A HORTICULTURAL OR FLORICULTURAL OPERATION.

SECTION 7. 25-8-504 (2), Colorado Revised Statutes, is amended to read:

25-8-504. Agricultural wastes. (2) (a) Neither the commission nor the division shall require any permit for animal or agricultural waste on farms, ~~and~~ ranches, AND HORTICULTURAL OR FLORICULTURAL OPERATIONS, except as may be required by the federal act or regulations. The provisions of any permit that are so required shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, the minimum required by the federal act or regulations.

(b) NOTHING IN PARAGRAPH (a) OF THIS SUBSECTION (2), AS AMENDED BY HOUSE BILL 05-1180, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY, SHALL BE CONSTRUED AS CHANGING THE PROPERTY TAX CLASSIFICATION OF PROPERTY OWNED BY A HORTICULTURAL OR FLORICULTURAL OPERATION.

SECTION 8. 25-12-102 (4), Colorado Revised Statutes, is amended to read:

25-12-102. Definitions. As used in this article, unless the context otherwise requires:

(4) (a) "Industrial zone" means an area in which noise restrictions on industry are necessary to protect the value of adjacent properties for other economic activity but shall not include agricultural, HORTICULTURAL, OR FLORICULTURAL operations.

(b) NOTHING IN PARAGRAPH (a) OF THIS SUBSECTION (4), AS AMENDED BY HOUSE BILL 05-1180, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY, SHALL BE CONSTRUED AS CHANGING THE PROPERTY TAX CLASSIFICATION OF PROPERTY OWNED BY A HORTICULTURAL OR FLORICULTURAL OPERATION.

SECTION 9. 25-15-101 (6) (b) (III), Colorado Revised Statutes, is amended to read:

25-15-101. Definitions. As used in this article, unless the context otherwise requires:

(6) (b) "Hazardous waste" does not include:

(III) (A) Agricultural, HORTICULTURAL, OR FLORICULTURAL waste from the raising of crops or animals, including animal manures, ~~which~~ THAT are returned to the soil as fertilizers or soil conditioners;

(B) NOTHING IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (III), AS AMENDED BY HOUSE BILL 05-1180, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY, SHALL BE CONSTRUED AS CHANGING THE PROPERTY TAX CLASSIFICATION OF PROPERTY OWNED BY A HORTICULTURAL OR FLORICULTURAL OPERATION.

SECTION 10. 35-11.5-103 (1), Colorado Revised Statutes, is amended to read:

35-11.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1)(a) "Agricultural products" means any agricultural, horticultural, FLORICULTURAL, viticultural, or vegetable product grown or produced.

(b) NOTHING IN PARAGRAPH (a) OF THIS SUBSECTION (1), AS AMENDED BY HOUSE BILL 05-1180, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY, SHALL BE CONSTRUED AS CHANGING THE PROPERTY TAX CLASSIFICATION OF PROPERTY OWNED BY A FLORICULTURAL OPERATION.

SECTION 11. 35-28-104 (1), Colorado Revised Statutes, is

amended to read:

35-28-104. Definitions. As used in this article, unless the context otherwise requires:

(1) (a) "Agricultural commodity" means any agricultural, horticultural, FLORICULTURAL, viticultural, and vegetable products, livestock and livestock products, wheat, hay, corn, bees and honey, poultry and poultry products, and milk and milk products, either in their natural state or as processed, including any marketable agricultural product, but does not include sugar beets, timber and timber products, oats, malting barley, barley, hops, rice milo, and other feed grains. These exceptions shall be the sole exemptions, irrespective of any other exemptions provided by law, and particularly as set forth in section 35-28-122.

(b) NOTHING IN PARAGRAPH (a) OF THIS SUBSECTION (1), AS AMENDED BY HOUSE BILL 05-1180, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY, SHALL BE CONSTRUED AS CHANGING THE PROPERTY TAX CLASSIFICATION OF PROPERTY OWNED BY A FLORICULTURAL OPERATION.

SECTION 12. 35-38-102 (2), Colorado Revised Statutes, is amended to read:

35-38-102. Definitions. As used in this article, unless the context otherwise requires:

(2) (a) "Equipment" means a machine designed for or adapted and used for agriculture, HORTICULTURE, FLORICULTURE, livestock, grazing, light industrial, utility, and outdoor power equipment. "Equipment" does not include earthmoving and heavy construction equipment, mining equipment, or forestry equipment.

(b) NOTHING IN PARAGRAPH (a) OF THIS SUBSECTION (2), AS AMENDED BY HOUSE BILL 05-1180, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH GENERAL ASSEMBLY, SHALL BE CONSTRUED AS CHANGING THE PROPERTY TAX CLASSIFICATION OF PROPERTY OWNED BY A HORTICULTURAL OR FLORICULTURAL OPERATION.

SECTION 13. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final

adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 10, 2005, if adjournment sine die is on May 11, 2005); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Joan Fitz-Gerald
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO